IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

APPEAL FROM ORDER NO. 91 OF 2004

Tushar Pandharinath Zore. .... Appellant.

Versus.

Shri Shivaji Baban Sapkal & ors. .... Respondents.

Shri J.S.Kini for the Appellant.

Shri Vilas Tapkir for the Respondents.

CORAM : ABHAY S. OKA, J.

DATED : 10th January, 2005.

P.C.:

1. Heard Shri Kini for the Appellant. The appeal is by the original Defendant No.2. By the impugned order dated 1st January 2004, the Appellant/Defendant No.2 has been temporarily restrained from causing obstruction to the possession of the original Plaintiffs over the suit property and the Appellant is also restrained from creating any third party interests in respect of the suit property.

2. The Appellant claims on the basis of a sale deed executed by the Respondent No.4. There is a primafacie finding recorded by the trial Court that the property

was an ancestral property and therefore, the Defendant No.1 was only a co-sharerer in the property. In view of this position, the discretionary order of temporary injunction has been granted. The order of injunction has been operating for the last more than one year.

3. The finding recorded by the learned trial Judge is based on material on record. No interference is called for in respect of the discretionary order passed by the trial Court.

4. Hence the Appeal is dismissed with no order as to costs.

5. It is obvious that while deciding the suit the trial Court will not be bound by the primafacie findings which are recorded in the impugned order and the suit will be decided on its own merits. Liberty to apply to the trial Court for fixing early date of hearing of the suit.

6. Parties to act on authenticated copy of this order.

Judge.